

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF CORRECTIONS

In the Matter of the Risk Level Determination of Russell Hatton	<b>ORDER GRANTING MOTION TO DISMISS</b>
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On June 10, 2009, the undersigned Chief Administrative Law Judge (ALJ) received a Motion to Dismiss the Risk Level Determination Appeal of Russell Hatton (Petitioner) as moot. Petitioner is a Level III sex offender currently confined to the Minnesota Sex Offender Program. On July 1, 2009, the ALJ received from Petitioner a "Motion to Rebuttal the Risk Level with Justifiable Controversy." The motion purports to establish that the appeal of Petitioner's Risk Level Assessment is not moot. On July 7, 2009, the ALJ received a copy of a letter from F. Richard Gallo, Assistant State Public Defender and counsel for Petitioner, explaining to Petitioner that because Petitioner had undertaken the motion without advice of counsel, Mr. Gallo could no longer represent him. On July 13, 2009, the ALJ received a letter from Angela Helseth Kiese, Assistant Attorney General, representing the Department of Corrections (the Department). The letter acknowledged receipt of Petitioner's motion and renewed the Department's motion to dismiss.

For the reasons set forth in the Memorandum that follows, the Administrative Law Judge GRANTS the Department's Motion to Dismiss and the appeal of the risk level determination of Russell Hatton is hereby DISMISSED.

Dated: July 15, 2009

s/Raymond R. Krause

RAYMOND R. KRAUSE

Chief Administrative Law Judge

**MEMORANDUM**

**I. Background**

Petitioner is a registered sex offender for purposes of risk level assignment under Minn. Stat. § 244.052. Prior to his release from prison, an end of confinement review committee (ECRC) assigned Petitioner a risk level

three pursuant to Minn. Stat. § 244.052, subd. 3(f) (2008). Upon his release from confinement in prison, Petitioner was committed for an indefinite period to the Minnesota Sex Offender Program (MSOP), a state treatment facility. An offender residing at MSOP is not subject to the risk level community notification under the statute.

When Petitioner is eventually released from confinement in the MSOP, Minn. Stat. § 244.052 requires that an ECRC assign another risk level to him. The net effect of the interaction of these provisions is that the risk level determination made by the ECRC upon release from prison has no practical effect and Petitioner will be able to contest whatever risk level determination is made at the end of his confinement at MSOP.

### **Mootness**

The principal of mootness is well established. “The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).”<sup>1</sup> A party must show a direct and personal harm in order to maintain standing.<sup>2</sup> If one cannot demonstrate such a personal interest, the claim may be moot. The instant appeal is governed by the contested case provisions of chapter 14 and the doctrine of mootness is equally applicable here.<sup>3</sup>

With regard to Petitioner and this case, because he is committed to MSOP, there will be no community notification until he is released from that confinement. At the time of his release from MSOP, another ECRC will be convened and another assessment made. A risk level determination will be made and he will have the opportunity to appeal that determination. There is no practical effect to the determination made prior to his release from prison.

Petitioner argues that the issue is not moot because the method by which a determination is arrived at is unconstitutional. Even if such a claim had merit, the proper time to raise the issue is when Petitioner is assigned a risk level that has some practical effect.

Petitioner also argues that his confinement in MSOP is illegal and therefore he has standing. Again, this is a hearing on an appeal of his risk level determination, not an appeal of his continued confinement. Such an appeal is outside the jurisdiction of this court.

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<sup>1</sup> *Kahn v. Griffin*, 701 N.W. 2d 815, 821 (Minn. 2005)

<sup>2</sup> *In re the Risk Level Determination of J.V.*, 741 N.W.2d at 614.

<sup>3</sup> *Id.* and Minn. R. 1400.5500(k).

Petitioner has not demonstrated any impact or personal harm caused by the risk level assigned by the ECRC, there is no issue to resolve.<sup>4</sup> The motion to dismiss is therefore granted.

**R. R. K.**

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<sup>4</sup> *In re the Risk Level Determination of J.V.*